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IN THE
Supreme Court of the United States
OCTOBER TERM, 1942.

No. 499

META BIDDLE ROBINETTE, *Petitioner,*
against

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

No. 500

ELISE BIDDLE PAUMGARTEN, *Petitioner,*
against

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

On Writs of Certiorari to the United States Circuit Court
of Appeals for the Third Circuit.

REPLY BRIEF FOR THE PETITIONERS.

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**Distinguishing the Case of *Humes v. United States*,
276 U. S. 487.**

The *Humes* case involved the valuation under estate tax liability on a contingent interest in a residuary estate transfer to charity.

The niece, who was the primary remainderman, being in existence at the date of the decedent's death, received a

vested interest in the entire remainder which was distributable to her in specified portions upon her attaining the ages of 30, 35 and 40. The vested interest thus transferred to her could only be divested if she should die without issue before attaining the age of 40, in which event the undistributed principal was to be distributed to the contingent charitable interests.

There was no question raised in the Humes case as to the possibility of valuing the girl's vested remainder interest. The argument and the decision related only to the valuation of the charitable contingent interests.

In the instant cases, remainder interests on the date of the creation of the trusts could not have been transferred to the issue of Miss Robinson not then in existence, and as of that date the only interests in existence with respect to such remainders were those vested interests retained by the grantors and secondary life tenants which can be, as the respondent maintains on page 6 of his brief, computed by methods similar to those employed in the Smith case.

The Humes case is therefore applicable to the instant cases only in so far as the valuation of the contingent interests in the issue of Miss Robinson are concerned, and if so restricted and construed we have no quarrel with the Humes case. We maintain that on the date of the transfers herein Miss Robinson's issue could receive nothing of value, and the entire remainders were therefore retained by the respective grantors subject to their powers of appointment.

Moreover, the contingent interests of Miss Robinson's issue in these cases being incapable of evaluation under the Humes case, and the respondent not having sustained the presumption in favor of the correctness of his determination, the burden was on him to prove the corrected value of the reduced remainders or property transferred.

In these cases the taxpayers filed gift tax returns disclosing the execution of the trusts and claimed there was no gift tax liability. The Commissioner then determined that

the transfer of the entire remainder interests under the Indentures constituted gifts.

There are innumerable decisions to the effect that the Commissioner's determination is presumed to be correct. This presumption, however, is rebuttable, and in the instant cases was rebutted by the taxpayers in the proceedings before the Board, in which proceedings the Commissioner's determination was reversed. At that point it became incumbent upon the Commissioner to show and prove that although the taxpayers did not make a gift in the amount originally determined by him, nevertheless they did make a gift in a lesser amount, the computation of which he should then have proceeded to prove. (This was pointed out by the C. C. A. Fifth in the McLean case, our brief p. 28.)

One of the items to be proved in supporting his amended or corrected determination would necessarily be the basis of his deficiency, i.e. the value of the contingent interests transferred to the issue of Miss Robinson as opposed to the value of the reversionary interests retained by the taxpayers. It being agreed by all parties concerned that the Humes case is good law, and that it effectively removes the possibility of valuing the contingent interests of the issue under the trusts, then the entire remainders must be considered as having been retained by the grantors subject to their reversionary interests, since no part thereof can be allocated to the issue's contingent interest.

CONCLUSION.

The decision of the Circuit Court of Appeals for the Third Circuit should be reversed and the decision of the Board of Tax Appeals should be affirmed.

Respectfully submitted,

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